



NUCLEAR REGULATORY COMMISSION

[NRC-2014-0099]

Proposed Revision 0 to Fitness-for-Duty - Construction

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft new section; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition," Section 13.7.2, "Fitness for Duty—Construction." The NRC seeks comments on the proposed new section of the Standard Review Plan (SRP), concerning implementation of a Fitness-for-Duty (FFD) program during construction. The current SRP does not contain guidance on the review of an applicant's proposed construction FFD program.

DATES: Comments must be filed no later than [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION]. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0099**. Address questions about NRC dockets to Carol Gallagher;

telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN-06-44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Wesley W. Held, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone at 301-415-1583 or e-mail at Wesley.Held@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments.

A. Accessing Information

Please refer to Docket ID **NRC-2014-0099** when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- **Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2014-0099**.

- **NRC's Agencywide Documents Access and Management System (ADAMS):**

You may access publicly available documents online in the NRC Library at

<http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS Accession number for the proposed new section of the SRP, Section 13.7.2, "Fitness for Duty—Construction," is available in ADAMS under accession no. ML113270035.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID **NRC-2014-0099** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submissions. Your request should state that the NRC does not routinely edit comment submissions to remove such information

before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information.

The NRC seeks public comment on the proposed new section of SRP 13.7.2. This section has been developed to assist NRC staff with the review of applications for certain construction permits, early site permits, licenses, license amendments, and combined licenses and to inform new reactor applicants and other affected entities of proposed SRP guidance regarding an acceptable method by which to evaluate a proposed FFD program for compliance with Part 26 of Title 10 of the *Code of Federal Regulations* (10 CFR).

Following NRC staff evaluation of public comments, the NRC intends to finalize SRP 13.7.2, Revision 0 in ADAMS and post on the NRC's public Web site within the link for NUREG-0800. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

III. Backfitting and Issue Finality.

Issuance of this draft SRP, if finalized, would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR Part 52. The NRC's position is based upon the following considerations.

1. *The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR Part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing licenses and regulatory approvals. Hence, the issuance of a final SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR Part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR Part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR Part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants. The exceptions to the general principle are applicable whenever an applicant

references a 10 CFR Part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

Dated at Rockville, Maryland, this 22nd day of April, 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino, Chief,
Policy Branch,
Division of Advanced Reactors and Rulemaking,
Office of New Reactors.